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JAN - 4 2010

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIAUNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA
SACRAMENTO DIVISION

In re)
MARTHA BRONSON,) Case No. 09-46592-A-13G
Debtor.) Docket Control No. MB-1

MEMORANDUM

The chapter 13 debtor, an attorney, has filed a second chapter 13 case. Her earlier chapter 13 case, Case No. 09-38254, was filed on August 27, 2009 and dismissed on December 8, 2009. The most recent case was filed on December 4, four days before the entry of the dismissal order.

On December 30, 2009, the debtor filed a motion to extend the automatic stay beyond the thirtieth day after the filing of her second case.

On January 4, 2010, the debtor filed a second motion to extend the automatic stay, this time in the context of an adversary proceeding, No. 09-2831. The second motion is accompanied by a request for a hearing on January 7.

11 U.S.C. § 362(c) deals with the duration of the automatic stay. Section 362(c)(3) limits the duration of the automatic stay when the debtor has filed a prior petition and applies only

1 to individual debtors. If an individual was a debtor in a prior
2 case under chapter 7, 11, or 13, if that prior petition was
3 dismissed, and if the prior petition was pending within 1 year of
4 the new petition, the automatic stay with respect to a debt,
5 property securing such debt, or any lease terminates as to the
6 debtor (but not the estate) on the 30th day after the filing of a
7 new case.

8 Section 362(c)(3)(B) permits any party in interest to file a
9 motion for continuation of the automatic stay. The debtor is a
10 party in interest.

11 Therefore, the debtor may ask the court to extend the
12 automatic stay provided that all creditors to be affected by the
13 stay are given notice and a hearing is conducted. See In re
14 Collins, 334 B.R. 655 (Bankr. D. Minn. 2005); In re Charles, 332
15 B.R. 538 (Bankr. S.D. Tex. 2005). The hearing must be completed
16 before the expiration of the initial 30 days of the case. See In
17 re Ziolkowski, 338 B.R. 543 (Bankr. D. Conn. 2006); In re Wright,
18 339 B.R. 474 (Bankr. E.D. Ark. 2006); In re Toro-Arcila, 334 B.R.
19 224 (Bankr. S.D. Tex. 2005).

20 Here, no certificate of service accompanies either motion.
21 However, even if it is assumed that all creditors were served by
22 mail on December 30 with the first motion, the debtor requested a
23 hearing on January 4 at 9:00 a.m. This provided no effective
24 notice to creditors. On December 31, the court closed at noon,
25 and it was closed on January 1, 2, and 3 for the holiday and the
26 weekend. It is doubtful that any creditor would have received
27 the motion prior to the hearing.

28 Of course, the court could conceivably set a hearing on a

1 later date as requested in the second motion. However, the
2 hearing must be concluded before the expiration of the initial 30
3 days of the case. See 11 U.S.C. § 362(c)(3)(B). The 30-day
4 window closed on January 3. While this fell on a weekend, the
5 statute requires that the hearing be concluded "before the
6 expiration of the 30-day period. . . ." See 11 U.S.C. §
7 362(c)(3)(B). Therefore, a hearing should have been scheduled on
8 December 31 at the latest. Because this court employs a "self-
9 set" law and motion calendar, it was incumbent on the debtor to
10 make seasonable arrangements for hearing no later than December
11 31.

12 If the court could deny all creditors notice and a hearing
13 on the motion, and ignore the fact that the motion would not be
14 acted upon within the 30-day window, it nonetheless would deny
15 the requested extension of the automatic stay.

16 In order to extend the automatic stay, the debtor must
17 demonstrate that the filing of the new case was in good faith.
18 There is a developing divergence in the case law as to how this
19 must be established. Some courts merely look to the language of
20 section 362(c)(3)(C). For example, in In re Whitaker, 341 B.R.
21 336, 345 (Bankr. S.D. Ga. 2006), the court held: "[T]he chief
22 means of rebutting the presumption of bad faith requires the
23 movant to establish 'a substantial change in the financial or
24 personal affairs of the debtor . . . or any other reason to
25 conclude' that the instant case will be successful."

26 Other courts employ a "totality of the circumstances" factor
27 analysis to determine a debtor's good faith in filing multiple
28 petitions. See In re Montoya, 333 B.R.449, 458; In re Galanis,

1 334 B.R. 685, 691 (Bankr. D. Utah 2005); In re Ball, 336 B.R.
2 268, 273 (Bankr. M.D.N.C. 2006); In re Havner, 336 B.R. 98
3 (Bankr. M.D. N.C. 2006).

4 Whichever standard is appropriate, the debtor in this case
5 has not satisfied it.

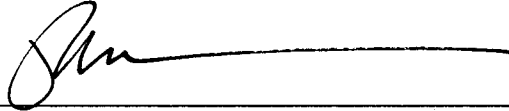
6 The motions explain only why the prior case was dismissed.
7 They make no showing that this case will be successful. The
8 second motion dwells on the merits of the adversary proceeding.
9 However, even if the adversary proceeding has merit, this has no
10 necessary impact on the ability of the debtor to propose and
11 confirm a chapter 13 plan. Under section 362(c)(3)(C), to
12 establish, by "clear and convincing evidence," that the new case
13 was filed in good faith, the debtor must prove that a chapter 13
14 plan will be confirmed and fully performed in the new case. The
15 motion does not address this issue.

16 In declining to extend the automatic stay beyond the
17 thirtieth day of this case, the court notes that section
18 362(c)(3) provides for the expiration of the automatic stay only
19 as to the debtor. The automatic stay remains in place as to the
20 bankruptcy estate. Provided the proposed plan does not reconstitute
21 the estate in the debtor, the automatic stay will protect
22 property of the estate until it is terminated. Consequently, the
23 estate continues to be protected by the automatic stay and once a
24 plan is confirmed, acts against the debtor be limited by the
25 plan. 11 U.S.C. § 1327(a) provides that confirmation of the plan
26 binds the debtor and all creditors. Thus, once confirmed, the
27 rights of creditors are limited to those rights specified in the
28 plan.

1 Therefore, both motions will be denied. A separate order
2 will be entered.

3 Dated: *4 Jan 2010*

4 By the Court

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7 Michael S. McManus, Judge
8 United States Bankruptcy Court
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CERTIFICATE OF MAILING

I, Susan C. Cox, in the performance of my duties as a judicial assistant to the Honorable Michael S. McManus, mailed by ordinary mail to each of the parties named below a true copy of the attached document.

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Dated: January 5, 2010



Susan C. Cox
Judicial Assistant to Judge McManus